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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

COMMUNITY SCHOOLS INITIATIVE, et al.,)	Case No. 2:23-cv-00069-APG-EJY
)	
Plaintiffs,)	Las Vegas, Nevada
)	OCTOBER 1, 2024
vs.)	Courtroom 3D
)	
VANGUARD FIELD STRATEGIES, L.L.C., et al.,)	MOTION HEARING
)	
Defendants.)	C E R T I F I E D C O P Y
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ELAYNA J. YOUCHAH
UNITED STATES MAGISTRATE JUDGE

DIGITALLY RECORDED: Liberty Court Recorder (LCR)
11:02 - 11:40 A.M.

RECORDED BY: Elvia Garcia

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Proceedings recorded by electronic sound recording; transcript
produced by machine shorthand and computer-aided transcription.

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10 and

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1 LAS VEGAS, NEVADA; OCTOBER 1, 2024; 11:02 - 11:40 A.M.

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3 P R O C E E D I N G S

4 COURTROOM ADMINISTRATOR: This is the time set in
5 the case of 23-cv-69-APG-EJY, Community Schools Initiative
6 versus Vanguard Field Strategies, L.L.C.

7 Plaintiff's counsel, please enter your appearance
8 for the record.

9 MR. TAKOS: Good morning, Your Honor. Zachary Takos
10 on behalf of the plaintiffs.

11 THE COURT: Thank you.

12 COURTROOM ADMINISTRATOR: Defendants, please enter
13 your appearance for the record.

14 MR. BARR: Bradley Bodamer on behalf of defendant
15 Vanguard and Axiom.

16 MR. BODAMER: Bradley Bodamer also on behalf of the
17 defendants.

18 THE COURT: All right. Thank you.

19 All right, gentlemen, I have read the motion, which
20 is a motion to compel discovery, ECF Number 73, as well as the
21 opposition, which is ECF Number 78. I've also looked at a
22 variety of documents. I don't think any of you have been
23 before me before, so let me just tell you I tend to read
24 absolutely everything. I also was a civil practitioner for
25 over 25 years before I took the bench and have more discovery

1 knowledge than I ever thought I would or probably cared to. I
2 tell people, you could wake me up from anesthesia, don't ask me
3 the President, ask me, you know, what *relevance* means or
4 something like that. I probably know.

5 So to begin with, I don't need any argument on the
6 timeliness of this motion. While I understand why it was
7 raised, and that's fine, discovery closed on July 12th and the
8 motion was filed on August 2nd and the discussion about the
9 scheduling of the deposition of Tom Goodson continued until the
10 end of July. I find the motion was timely. And if you need or
11 feel the desire to make a record on that issue, you certainly
12 can, but I don't need argument on it.

13 I also reviewed the timeline of events for purposes
14 of determining the issue of diligence because, of course,
15 before the Court would really consider whether to grant the
16 motion, which in essence defendants say is a reopening of
17 discovery, it is to the extent that discovery is closed, but I
18 can give you a little bit more insight on my feeling on that.
19 There must be diligence, and the Court finds there is
20 sufficient diligence here to proceed and look at excusable
21 neglect, which I can also address in some parts, but I will
22 take argument on other.

23 I note that the first request for a deposition, if I
24 have my timeline right, for Mr. Goodson happened in 2023. It
25 was, I believe, November 23rd of 2023. It was a date defense

1 counsel was not available because of its schedule. And then
2 there were follow-up emails on December 14, 16, and 18, which I
3 have looked at. And then there was a discussion about setting
4 his deposition on July -- excuse me -- on January 22nd. Why
5 that was canceled may be in dispute, but that date was not set.

6 I recognize that between January and June there
7 doesn't appear to be discussion about -- specifically about
8 Mr. Goodson but substantial other discovery occurred, and
9 June 5th, which is a month before close of discovery, the
10 discussion about Mr. Goodson arises again. And I've looked at
11 those exhibits as well. And the discussion was really, I would
12 call it continuous. While there are breaks in dates because
13 people are getting back to one another, the discussion begins
14 on June 5th and ends on July 23rd. And between June 5th and
15 July 23rd, that is -- I should say that differently.

16 Starting on June 5th and before July 23rd and going
17 all the way back to December, there is never a mention in
18 anything that I have before me that counsel for defendant did
19 not represent Mr. Goodson or that Mr. Takos should not be going
20 through counsel for defendants for purposes of setting his
21 deposition, so this argument about Rule 45 subpoenas seems
22 disingenuous to me, since if Mr. Takos had gone to plaintiff or
23 Mr. Castor had gone about trying to set a deposition for
24 somebody you represented, the defendants represented, there
25 would have been a flurry of activity about how "You should have

1 been going through us as opposed to reaching out to Mr. Goodson
2 directly." So I didn't find that a particularly compelling
3 argument.

4 I also note that defense counsel, understandably, we
5 have lives. As much as our clients never believed we did, we
6 do have lives, and there were times when attempts were made to
7 set depositions when defense counsel was not available for one
8 reason or another, personal or professional. And there doesn't
9 appear to be a difficulty on the part of plaintiff in
10 accommodating those needs.

11 There is some testy back-and-forth after defense
12 counsel filed a motion seeking extension of time, not their
13 first, for -- to submit a rebuttal expert, and, you know, I
14 understand people feel like, you know, what's good for the
15 goose is good for the gander, but it doesn't always work that
16 way in discovery. It's not a -- you know, *an eye for an eye*
17 proposition. At least it never was in the 25-plus years I did
18 it. So I didn't really find that terribly compelling either.

19 The real question for me is, given that this is
20 looking at excusable neglect, that there's no imminent trial
21 date here and there won't be until motions for summary judgment
22 are decided and a JPTO is filed, there was diligence, which
23 I've already mentioned, that the deposition would not have come
24 as a surprise, the real question is just prejudice, whether
25 there's prejudice. Given that the motions for summary judgment

1 have -- motion for summary judgment has been filed and it was
2 filed on the due date, I think the day before the due date, and
3 that was a date set by the Court, and while there could have
4 been a request to extend that date, I understand why there was
5 not if the parties were ready to file, filing is appropriate.

6 So the real question is whether taking Mr. Goodson's
7 deposition now is so prejudicial that it shouldn't occur. And
8 that is what I really would like to hear the focus of the
9 argument to -- well, the argument to focus on, to say that
10 better.

11 I am -- I'll just mention that the discussion about
12 no legal authority to require a party to produce a former
13 employee came very late in this conversation. Didn't find that
14 particularly compelling. If Mr. Goodson at one point was
15 cooperating with defendant and now is not cooperating with
16 defendant so defendant could no longer control his appearance,
17 whereas at one time he was cooperating, I understand that, but
18 to sort of blame plaintiff for Mr. Goodson's change didn't sit
19 quite right with me. You can explain that to me if you'd like.

20 It is plaintiff's motion, so I'd ask you to go ahead
21 and address the issue of prejudice first. I know that defense
22 counsel did not point out that you didn't argue excusable
23 neglect in your motion to compel, but I have a wide latitude of
24 authority when it comes to discovery, even things that are not
25 officially presented to me. The case law is replete with that.

1 So I'm exercising that authority here.

2 If you'd like to go ahead, Mr. Takos.

3 MR. TAKOS: Thank you, Your Honor. Thank you very
4 much. And thank you, more than anything, for really narrowing
5 the issue down. And I'll just address the prejudice issue.

6 I think Your Honor has already mentioned, this is a
7 deposition that we have been seeking off and on, and for
8 different reasons we had to postpone that, but it is a
9 deposition that we've been seeking very early on. And it came
10 as no surprise to defense counsel that we want to do that. And
11 so it's not a surprise to them. They're not prejudiced by any
12 sort of surprise.

13 And, in fact, as discovery went on, the later
14 depositions that we took closer to the close of discovery,
15 everyone kind of was mentioning in terms of certain issues in
16 the case that it was Tom Goodson who had the most information.
17 So not only did we identify that early on, but I think even
18 discovery has kind of funneled that issue down to Mr. Goodson.

19 And then, finally, the only other thing I would say
20 is, as Your Honor pointed out, the motions for summary judgment
21 have been fully briefed. You know, God bless this Court, but
22 it takes a long time to get a motion for summary judgment
23 granted. And I think we all understand that. And so because
24 of that, it seems to me that this is the perfect time to take
25 one deposition of one individual, and there would be no

1 prejudice to the defendants for letting us do that. Thank you.

2 THE COURT: Thank you.

3 All right. Before I hear from defendants, I note
4 that there's somebody on video that didn't make an appearance,
5 and I just don't know who this gentleman is or why he's here.
6 And it's fine that he's here, but if you wouldn't mind...

7 MR. BODAMER: Yes, Your Honor. That is George
8 Lewis. He's also with my law firm Graves Garrett. He's back
9 in Kansas City. Again, I understand -- I appreciate the Court
10 allowing us to appear remote, but, again, not knowing exactly
11 what to expect and having not appeared in this Court, I thought
12 it was worth the time to come out here.

13 THE COURT: Well, I appreciate you being here. No
14 problem. Very good. So are you arguing on behalf of
15 defendant, or is it --

16 MR. BODAMER: If permissible, yes, ma'am.

17 THE COURT: All right. Please go ahead.

18 MR. BODAMER: All right. And, again, you are,
19 obviously, very well familiar with the record here, but what
20 we're struggling with, before I get to the prejudice argument,
21 again, the discovery closed on July 12th and summary judgment
22 motions were filed on August 12th, I think you communicated,
23 and they've been fully briefed as of September -- I'm sorry.
24 Thank you. -- as of September 17th. And what plaintiffs are
25 asking for is for Vanguard to produce a former employee who is

1 a resident of Houston, Texas, and he's asking basically for
2 this Court to compel us to do that, again, a non-party.

3 Mr. Goodson is not a party to this. And, yes, it's
4 true that back in December when they noticed up Mr. Goodson, we
5 did agree to make him available. And we did make him available
6 to be deposed in January. We came out here and produced three
7 of our other witnesses, and then Mr. Takos decided that he did
8 not want to go forward with Mr. Shied, who was the Vanguard
9 employee who was kind of the primary contact with CSI, and did
10 not want to take the deposition of Mr. Goodson.

11 And then it went silent, literally, for five months.
12 And then on June 5th and again on June 17th, Mr. Goodson's name
13 came back in, but again he was asking for seven different
14 witnesses, including a 30(b)(6) witness, and Mr. Goodson was
15 just one of those. And then we continued this record, I'm sure
16 you're familiar with, we kind of went back and forth on that,
17 and then Mr. Goodson really fell off the list. I mean, he
18 just -- we weren't even talking about Mr. Goodson until,
19 frankly, after discovery was closed.

20 And the issue at that time was they had, late in the
21 game, submitted a 30(b)(6) -- notice to take a 30(b)(6) or a
22 corporate representative deposition, which despite doing that,
23 I think four days before discovery closed, we agreed to produce
24 someone to respond to that 30(b)(6) deposition. And we were
25 prepared to do so.

1 And, again, it wasn't until after discovery closed
2 that I get on the phone with Mr. Castor and Mr. Takos and they
3 said, "Well, forget the 30(b)(6). We now want Tom Goodson."
4 And I said, "Well, he's no longer employed." All right?

5 THE COURT: When did he become unemployed by the
6 company?

7 MR. BODAMER: I'm sorry. When did --

8 THE COURT: When did he stop being employed by the
9 company? Before December?

10 MR. BODAMER: Actually, I don't -- I don't know the
11 answer to that, but I will acknowledge that I do not believe --
12 although I didn't realize or remember this, he was not an
13 employee back in January of 2024 when we agreed to produce him.

14 THE COURT: So the fact that he's not an employee in
15 July doesn't really mean anything. And I'll just point out
16 that the emails -- yes, the emails start June 5th. There's a
17 June 10th email where Mr. Goodson's name comes up. There's a
18 June 17th email where his name comes up. So for -- in the
19 matter of 12 days, three emails back and forth between the
20 parties, Tom, Tom, Tom. So this is all a month before, and at
21 no point in that time did you say he wasn't an employee and "We
22 can't produce him. Issue a subpoena." It isn't until
23 July 23rd that you say that.

24 MR. BODAMER: Well, first of all, July 17th was the
25 last time they asked for him until after the close of

1 discovery. I'm sorry. June 17th was the last they --

2 THE COURT: But you never gave them a date and you
3 didn't say on that day, or at any day before the 23rd of July,
4 more than a month later, after the close of discovery, "You
5 must subpoena him."

6 Is Mr. -- is any opposing counsel supposed to intuit
7 that you want them to seek a deposition through Rule 45 instead
8 of going through counsel?

9 MR. BODAMER: Well, no, that was not the thinking.
10 The thinking was, we agreed to do a 30(b)(6) and we agreed to
11 produce two other witnesses. One was our rebuttal expert, and
12 the other was the HR person. We agreed to do that after the
13 close of discovery, but there was no talk in that time, again,
14 about Goodson until after we had taken those depositions. And
15 that's when I was talking with Mr. Takos. He came to Kansas
16 City for those depositions, and we said, "Well, we need to have
17 a discussion, then, about this 30(b)(6)."

18 And then Mr. Castor and Mr. Takos get on the line
19 with me the following week and say, "Well, forget the 30(b)(6).
20 We want Tom Goodson." So it had been over a month since his
21 name had been broached as a -- since June 17th until, what,
22 July 18th that they came back and said, "Oh, no, no 30(b)(6).
23 We want Mr. Takos (sic)." What I said was, "We will make sure
24 we have someone prepared to address the question" --

25 THE COURT: Yeah, you don't get to control who they

1 want to depose, right? That's clear. You get to control who's
2 identified as the 30(b)(6). That, you do.

3 MR. BODAMER: Correct.

4 THE COURT: But if they want to depose Mr. Goodson,
5 you don't get to say, "No, you can't depose him. You have to
6 depose our 30(b)(6)," any more than they could say, "You don't
7 get to depose our 30(b)(6). You have to depose so and so."
8 Works both ways, right? The opposing party doesn't get to
9 control who the other party deposes, with the exception of a
10 30(b)(6), unless it's an APACS and you do a motion, you know,
11 for protective order, that sort of thing, which didn't happen
12 here.

13 MR. BODAMER: Right. No, I understand your point
14 there. And it's not that we were trying to control who they
15 were going to depose, but the issue does come up, though, about
16 excusable neglect or whatever -- I can't remember the term now.

17 THE COURT: It is excusable neglect.

18 MR. BODAMER: Yeah, excusable neglect of, you
19 know -- there should be some shared responsibility for
20 whatever, of waiting until after the close of discovery to say,
21 "Oh, we want Tom Goodson."

22 Now, Your Honor understands, he was disclosed in our
23 initial disclosures.

24 THE COURT: Right.

25 MR. BODAMER: All right? Including what his role

1 was. We produced hundreds, if not thousands, of documents
2 already. There's no question about what Mr. Goodson's role was
3 in this, and yet they stood down until, again, after the --

4 THE COURT: Why in June did you not -- on June 5th
5 when -- a month before the close of discovery, five weeks,
6 actually, before the close of discovery, which is close but not
7 unusual for people to seek depositions through the end of
8 discovery --

9 MR. BODAMER: Oh, I understand.

10 THE COURT: Okay. So did you not say, "He is no
11 longer under our control. You need to issue a Rule 45 subpoena
12 if you want to depose him"?

13 MR. BODAMER: No, we did not do that --

14 THE COURT: No, no. Why not?

15 MR. BODAMER: Well, because what we were doing at
16 that time was checking availability of witnesses.

17 THE COURT: Did that include Mr. Goodson?

18 MR. BODAMER: At that point in time, no, because,
19 again, he was no longer on the list --

20 THE COURT: But he is on June 5th, sir. That's what
21 you're missing. He's on the list on June 5th, on June 17th, on
22 June 18th. He's on the list. Did you check his availability
23 at that time?

24 MR. BODAMER: I don't remember that. I don't
25 remember that.

1 THE COURT: All right. Fair enough.

2 MR. BODAMER: But, again, I don't -- I'm not saying
3 that we did, because, again, I don't think, in our mind, that
4 he was still on the list.

5 THE COURT: So on June 17th when he says, "Tom in
6 person," he, Mr. Takos, says, "Tom in person in Houston
7 July 8th-9" and you write back on the 18th, "We'll check with
8 folks, but as you can see, your schedule is problematic," you
9 don't see anything on the 18th that says, "Mr. Goodson is not
10 under our control. Mr. Goodson is a former employee. You have
11 to issue a Rule 45."

12 So on June 18th, you said -- I'm not sure if it's
13 you, sir, but -- Brad, yes. You said, "We'll check with
14 folks." This is a quote. "But as you can see, your schedule
15 is problematic." And Mr. Takos writes back the same day, "Why
16 don't we agree to take these depositions after the close of
17 discovery," and you write back, "Will not be producing anyone
18 next week, but we'll check with witnesses for other
19 availability dates." That's June 19th.

20 And on June 19th, Mr. Takos -- this is when the two
21 of you get into your little back-and-forth about he didn't
22 approve -- Mr. Takos didn't approve your two-week extension,
23 and so that created a problem for you, perhaps with your
24 client, meaning they felt that one failure to agree deserved
25 another failure to agree. And that's June 19th. It's not --

1 and you're taking depositions then at the beginning of July,
2 after discovery has closed, because you've agreed.

3 And then he raises again, "What about Tom?" And
4 it's on July 23rd that you -- this is what you're not answering
5 for me: You have from June 5th to July 23rd. That's 48 days,
6 approximately, 43 days if I'm doing my math, approximately 43
7 days, right? Six weeks. You do not mention that he's no
8 longer under your control at anytime during that period or tell
9 Mr. Takos, "If you want to depose him before the close of
10 discovery, issue a Rule 45 subpoena," clear to the end.

11 MR. BODAMER: Your Honor, they issued a Rule 45
12 subpoena back in December of '23, as well as a notice to us.
13 Now, they delivered it through us. I don't think there was a
14 question in the plaintiff's mind as to whether Mr. Goodson was
15 still an employee --

16 THE COURT: Okay.

17 MR. BODAMER: -- of the company. So here's --
18 here's the fundamental issue, in my mind:

19 THE COURT: Okay.

20 MR. BODAMER: How can we compel him -- how can this
21 Court --

22 THE COURT: You can't compel -- if you're telling me
23 you have no control over him and you're not his counsel, you
24 can't compel him. Are you his counsel or aren't you his
25 counsel?

1 MR. BODAMER: Only as a former -- only in the sense
2 as -- what is it, the *Palmer vs. Pioneer* case or whatever --

3 THE COURT: Right. So if you're his counsel for
4 purposes of the deposition because he falls, in your opinion,
5 under the standard that Nevada has set, which is an odd
6 standard, but it is what it is, right? We've lived with it for
7 a lot of years. None of us particularly care for it. So we --
8 you know, it is the standard.

9 If you are his counsel, then you can control his
10 appearance. If you're not his counsel, then Mr. Takos doesn't
11 have to consult with you, can issue the Rule 45 subpoena and
12 take his deposition. You can show up at the deposition and
13 say, "I've been retained for purposes of the deposition." He
14 can object. You can figure that out at the time. That's not
15 before me. But either -- either you're in control of the
16 witness and he's your client and you can compel him, or he's
17 not your client, in which case I agree, then Mr. Takos has to
18 go out and issue a Rule 45 subpoena, get a process server, can
19 serve you with the document but doesn't consult with you and
20 just goes out and serves the man with the date.

21 MR. BODAMER: As a former employee that could give
22 binding evidence or testimony on behalf of his former employer,
23 then yes, I think as counsel for Vanguard and Axiom --

24 THE COURT: I would think you'd want to be.

25 MR. BODAMER: I would agree. That, in my mind

1 anyway, is not the same as being able to control the witness to
2 the point of saying, "You need to give this deposition."
3 That's -- no, we don't have that kind of control.

4 THE COURT: All right. Then I'm going to let Mr.
5 Takos issue a Rule 45 subpoena. That's -- I mean, that's it.
6 You know, this -- my concern here, my biggest concern is, how
7 does this impact Judge Gordon and the motion for summary
8 judgment, right? Having practiced in California briefly many
9 years ago when there were no computer filings and you still ran
10 down to the Clerk's Office before 4:00 because they closed the
11 door, I -- you know, I appreciate timing very much.

12 Judge Gordon is highly unlikely to get to this
13 motion until, I would say probably early next year, so if the
14 deposition takes place and only this deposition and no motion
15 to amend, which isn't before me, and no other depositions, I'm
16 ruling on nothing else but Mr. Goodson's deposition today, if
17 that deposition were to take place let's say before
18 Thanksgiving, right, and you can supplement your motions for
19 summary judgment, it's not going to delay the case because
20 Mr. -- because Judge Gordon isn't going to look at this until
21 the beginning of next year anyway. So I don't find delay,
22 substantial delay, which can be prejudicial as sufficient here.
23 And I don't know what other prejudice would arise.

24 MR. BODAMER: The fact that the motion is fully
25 briefed, and then once the deposition's been taken, I guess we

1 have to anticipate, regardless of how it comes out, that there
2 may be a need --

3 THE COURT: Right. I'm saying, so I give you time
4 to supplement. Right. Right. So I give you time -- I can
5 order that. I know that Judge Gordon -- you know, different
6 judges, each one of us has (indiscernible), but I know that
7 Judge Gordon would not -- would expect me to provide you that
8 opportunity. And because I think that can happen before he
9 would look at the motion anyway, I don't see the prejudice that
10 would arise to you.

11 If I thought that he was reading those motions now
12 and making some preliminary decisions and was in the middle of
13 putting together whatever he'd be putting together, because I
14 have no idea, we don't talk about those kinds of things in the
15 Court, then I could understand prejudice. But because I think
16 this can happen before the motion for summary judgment would
17 take place, I don't know what prejudice arises to you. It's
18 one deposition that was originally scheduled in December.

19 I recognize the break between January and June, but
20 it comes up again five weeks before the close of discovery, and
21 my read of the interaction is that it was reasonable for
22 plaintiffs to believe that you were coordinating that
23 deposition until your statement on July 23rd that you were not.
24 That's the problem.

25 MR. BODAMER: I take issue -- I mean, of course I

1 don't agree that that's -- that that's the way it played out.

2 THE COURT: Is there something you can point me to?

3 I'm happy to -- I printed out the emails, you know, so I've
4 read them and have them before me. I'm happy to hand them to
5 you if you think there's something I'm misreading.

6 MR. BODAMER: Well, I'm sure you've read them, too.
7 The idea that I was asking, tell me what authority you have,
8 talking to the plaintiffs --

9 THE COURT: On July 23rd.

10 MR. BODAMER: Tell me what authority you have to
11 compel us to produce a former employee that we don't have
12 control over.

13 THE COURT: Because up until that point, you had
14 been coordinating the date with him.

15 MR. BODAMER: Well --

16 THE COURT: So if you're telling me you can't compel
17 him, I'll agree with you. That's fine.

18 MR. BODAMER: Judge, I'm actually a cooperative
19 lawyer. All right?

20 THE COURT: You seem like it.

21 MR. BODAMER: I think even -- well, I think even in
22 the record you can see we weren't trying to take hard and fast
23 rules. And, yes, I pointed out the fact that they -- they took
24 issue with a two-week extension on an expert rebuttal report
25 that had no impact on any other deadline in the case. And,

1 yes, I reminded them, you know, that --

2 THE COURT: That's fine.

3 MR. BODAMER: Because as Your Honor knows, you ended
4 up entering an order allowing us to do that --

5 THE COURT: I did.

6 MR. BODAMER: -- but saying, "No more extensions."
7 I mean, you were clear on that. And so, you know, it wasn't
8 the motivation for this. It's just, because we don't control
9 him, I just can't make any promises there. Again, I would be
10 cooperative in the sense of trying to talk with Tom Goodson and
11 say, "Look, here's the situation we're in," but frankly, the
12 safest route would probably be get a subpoena issued for him.

13 Now, I can check and come back, if you'd like,
14 but --

15 THE COURT: That's not necessary.

16 MR. BODAMER: -- frankly, the subpoena has to issue
17 out of Texas as well.

18 THE COURT: Yeah, but you can issue that from here.

19 MR. BODAMER: Well, no, no, I know. No, I know.

20 THE COURT: And they get a process server in Houston
21 and they go out and they serve him. I mean, it's -- I'm
22 giving -- I understand you're frustrated, I do, I understand.
23 And I don't think there was any conduct here intentional to do
24 something. I think that what you were thinking and what comes
25 across in emails are not identical. Won't be the first time,

1 won't be the last, right? Nobody had mentioned to me until you
2 did here that a subpoena was issued in December. That's a good
3 piece of information. But it still went through you, which
4 you've said.

5 MR. BODAMER: Yes, it did.

6 THE COURT: So it appears that there was a period of
7 time when you had some influence, whatever it was, over Mr.
8 Goodson to obtain his cooperation on obtaining a date and now
9 you don't have that same level of influence.

10 MR. BODAMER: We don't. Time has passed.

11 THE COURT: Right. I get it. That's fine. He
12 said, "No more." And if he didn't want to cooperate with you,
13 you can't force him to do that.

14 On the other hand, when the subpoena is served,
15 you're going to want to be his counsel. And you can assert
16 that at the time, but I'm going -- I'm going to create a
17 timeline in which this has to occur.

18 MR. BODAMER: Okay.

19 THE COURT: And set a briefing schedule so that no
20 matter what Mr. Goodson says, good, bad, or indifferent for the
21 parties, you are free to supplement the motions for summary
22 judgment to add that evidence, as is appropriate for any of the
23 issues that are presented for decision in that fashion so that
24 nobody is prejudiced. And absent some other prejudice, which
25 that was the prejudice I was concerned about, because Mr. Takos

1 is going to have to travel, he's going to have to spend the
2 money, he's going to have to pay the process server.

3 I don't know if your firm has anybody in Texas. If
4 you all want to agree to do it on video, you can, right? Rules
5 allow that. But if you want to be there in person, that's up
6 to you. I'll leave that to you.

7 But we're going to set the deposition because I
8 just -- there's just no -- there's not a sufficient
9 demonstration of prejudice to outweigh the importance of this
10 deposition.

11 I do also understand that there was the 30(b)(6) and
12 the decision was to forego 30(b)(6) and reach Mr. Goodson.
13 That's not lost on me. Should they have decided that earlier?
14 Perfect world, yes. Did they decide it before the close of
15 discovery? Yes. I was always a defense lawyer, I was never on
16 the plaintiff's side, so I understand the frustration. I also
17 know what I had to do very often to accommodate the plaintiffs.
18 So it's not uncommon. This is not that uncommon.

19 Is there anything else you want to tell me?

20 MR. BODAMER: I don't think so. Thank you.

21 THE COURT: I appreciate it, sir.

22 Anything you need to tell me, Mr. Takos?

23 MR. TAKOS: No, Your Honor. Just thank you.

24 THE COURT: All right. So the motion is granted, to
25 the extent that plaintiffs are given the opportunity to serve a

1 Rule 45 subpoena on Mr. Goodson for deposition. The service --
2 the subpoena, the issuing of the subpoena, the service of the
3 subpoena and the date for the deposition must all occur before
4 or no later than, I'm going to say November 14th because the
5 next week is Thanksgiving week. People have lots of things
6 planned during those kinds of weeks, including potentially the
7 witness, and people travel on the Friday before, so that's why
8 I've picked November 14th.

9 If, Mr. Takos, you are having difficulty serving Mr.
10 Goodson, which I hope you do not, I know nothing about the man,
11 so I'm not suggesting he will be uncooperative. I'm just
12 saying, don't delay bringing that either to defense counsel or
13 to the Court so that there may be some assistance offered in
14 getting service accomplished, however that is, whatever
15 discussion occurs. I can't -- I can't foresee that now, I
16 don't know exactly, but what I'm trying to do is prevent this
17 from pushing into December when people get very busy towards
18 the -- you know, it's like August in France, I say, the end of
19 December and beginning of January in the U.S.

20 MR. TAKOS: Sure.

21 THE COURT: I'd rather be in France in August, but I
22 don't get that choice. So I -- so, you know, that's what I'm
23 really trying to avoid. So I am ordering you, to use a Supreme
24 Court phrase, all deliberate speed in getting this man served
25 and the deposition set.

1 MR. TAKOS: Perfect.

2 THE COURT: Before November 14th. Presuming that it
3 will take 30 days to get the transcript, that means that it
4 will probably be somewhere around December 13th to 16th, that's
5 a Friday to a Monday, before you get the transcript. It could
6 be sooner, but, of course, the court reporter will also have a
7 Thanksgiving holiday in there. So I would like -- you know, I
8 would like the supplement --

9 I'm sorry. Tell me who -- Mr. Takos, who filed
10 motions for summary judgment? Are there cross motions pending?

11 MR. TAKOS: There are cross motions pending.

12 THE COURT: Okay. I looked, but I didn't remember.
13 So you each have motions pending. So does it make sense --
14 I'll ask your opinions from each of you -- for each of you to
15 file a supplement and response in reply? Do you want to do --
16 you know, presumably, Mr. Takos would be looking to use Mr.
17 Goodson's testimony to somehow assist him in this case. That's
18 what I anticipate. Or does it make sense to have Mr. Takos
19 file a supplement and you to have the opposition to oppose?

20 I see that your co-counsel is saying cross -- cross
21 supplements.

22 MR. BODAMER: I defer to --

23 THE COURT: Okay. That's fine. But I want to limit
24 the number of pages. We're not rearguing, right? We're just
25 arguing whatever the supplement is that he provides. So less

1 than ten pages for fact summary of whatever Mr. -- I'm just
2 making sure because they're speaking to each other. So ten
3 pages or less, fact summary of whatever it is --

4 MR. BODAMER: Ten pages.

5 THE COURT: -- and then argument. Right. That is
6 the supplement. The same number of pages for opposition. Five
7 pages for reply. Okay?

8 MR. TAKOS: And, Your Honor, just one thing, if I
9 may point out?

10 THE COURT: Yes.

11 MR. TAKOS: So there are -- actually, defendants
12 filed separate motions for summary judgment, so just --

13 THE COURT: One supplement, however it applies to
14 all the arguments.

15 MR. BODAMER: I think on this particular issue that
16 Mr. Goodson might be most relevant to would probably be on the
17 Vanguard motion that flows into the subject matter of whether,
18 in fact --

19 THE COURT: It was the 70 percent.

20 MR. BODAMER: -- there were misrepresentations and
21 fraud and that sort of thing. So I think that's fine.

22 THE COURT: Okay. And so it's one --

23 (Indiscernible crosstalk.)

24 MR. BODAMER: -- incorporates that, I mean, because
25 we already incorporated the Vanguard argument in the --

1 THE COURT: Yeah. You know, typically -- and Judge
2 Gordon is a stickler for local rules -- you can't incorporate
3 prior argument, but in this case what I would -- I would say is
4 simply refer very clearly to page and lines that you are
5 referring to so that he can find it very easily so that -- and
6 you can put in a footnote that the Court ordered a limited
7 number of pages and suggested this methodology in this
8 particular case. All right? Not for all cases.

9 So -- yeah, so if -- is it unreasonable, gentlemen,
10 to ask that the supplements be filed by January 6th? That's
11 the Monday after New Year's. So New Year's is Wednesday, the
12 1st. I don't know if anybody has any trips planned. I don't
13 go anywhere, so... I seem to be here a lot. Is that too soon?

14 MR. TAKOS: We always go out of town. I know we'll
15 be gone for a couple of weeks around the Christmas, New Year's
16 break. A little extra cushion would not be objected to.

17 THE COURT: And I suspect the 13th is going to be --
18 is that Martin Luther King Day? So, yeah, it puts me to the
19 14th of January. I'm going to give you until the 10th.

20 MR. TAKOS: Okay. Thank you.

21 THE COURT: The 10th for the supplements, the
22 oppositions on the 20th, and the replies on the 27th. Ten,
23 ten, and five pages.

24 MR. TAKOS: Thank you, Your Honor.

25 MR. BARR: Your Honor, just a point of

1 clarification. Jeffrey Barr on behalf of defendants.

2 COURTROOM ADMINISTRATOR: Can you speak into the
3 microphone?

4 MR. BARR: I'm sorry. Jeffrey Barr on behalf of the
5 defendants. Just a point of clarification. While I've
6 motioned supplements and argued supplements, I just want to
7 make it clear that the supplements are optional, we don't have
8 to file a supplement?

9 THE COURT: That's correct.

10 MR. BARR: But we could file an opposition to
11 whatever supplement gets --

12 THE COURT: That's correct.

13 MR. BARR: So if there's something great, we
14 could -- that's helpful for defendants, we could file our own
15 supplement; if not, we can wait and see what Mr. Takos provides
16 and we can just file an opposition?

17 THE COURT: Absolutely.

18 MR. BARR: Okay.

19 THE COURT: Not mandatory. Optional. For both
20 parties. If you don't want to supplement, you don't have to
21 supplement. That's fine. If neither party supplements for
22 some reason, I would file a notice with the Court just so that
23 Judge Gordon knows that he is not to expect them.

24 And this is for this deposition only, no other --
25 the discovery is not opened for any other purpose at this time.

1 Any other request to reopen discovery or a motion to amend
2 would have to be filed separately and considered separately.

3 Any other questions so the -- so as stated on the
4 record. And the transcript is the order of the Court. The
5 motion is granted as stated but not as a motion to compel; just
6 as to the ability to take the deposition.

7 MR. TAKOS: Understood. Thank you, Your Honor.

8 MR. BODAMER: Will the Court issue a written order?

9 THE COURT: No. It is the written transcript.

10 MR. BODAMER: Not even a minute order?

11 THE COURT: The minute order says the transcript of
12 the proceeding is the order of the Court, and it says the
13 motion is granted to the extent stated on the record.

14 MR. BARR: Understood.

15 THE COURT: All right. Yes. That's all we do.
16 Otherwise, you'd be waiting another month, and I didn't think
17 that would be very helpful to you or to Judge Gordon. So
18 that's why I set this for a hearing after I got a chance to
19 read through it all. Some of the delay, of course, is mine.

20 MR. TAKOS: Thank you very much, your Honor. We
21 appreciate your time.

22 THE COURT: Anything else on behalf of the
23 defendants?

24 MR. BODAMER: Thank you for reading the
25 (indiscernible.)

1 THE COURT: I read everything. I do read
2 everything.

3 MR. BODAMER: I told Jeff, I said, "It's a lot of
4 paper."

5 THE COURT: It is, but I do try to read everything
6 to make sure I really understand. And I think I -- I got most
7 of it here. I know I'm not living the case, which I understand
8 as well.

9 MR. BODAMER: No. I appreciate it. Thank you very
10 much.

11 THE COURT: All right. With that, we're adjourned.
12 Thank you, everyone.

13 (Proceedings concluded at 11:40 a.m.)

14 --o0o--

15 I, Judy K. Moore, a court-appointed transcriber, certify
16 that the foregoing is a correct transcript transcribed from the
17 official electronic sound recording of the proceedings in the
18 above-entitled matter.

19

20 Date: October 19, 2024

21

22 /s/ Judy K. Moore

23 Judy K. Moore, CRR, RMR
24 Official Court Reporter
25 United States District Court
District of Nevada